

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor	Zaki A. Khan
Title	VEHICLE SEAT
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Application Serial Number	10/663,064
Examiner	Joseph F. Edell
Art Unit	3636
Confirmation No.	2049
U.S. Patent Office Communication	7/22/2010
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Attorney Docket No.	E59121.006

Commissioner for Patents
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The present application, filed on September 16, 2003 and assigned to Honda Motor Company Ltd., was finally rejected by the examiner in an Office action mailed July 22, 2010 (the “Final Office action”). Applicants appeal the rejection and request a pre-appeal brief conference.

I. Claim Rejections – 35 U.S.C. § 103

Review is requested for the rejection of Claims 1-4, 6-15 and 20 under 35 U.S.C. § 103(a). In the Final Office action the examiner asserts that Claims 1-4, 6-9, 12, and 20 are unpatentable over U.S. Pat. No. 2,771,124 to O. Borsani (“Borsani”) in view of JP Pub. No. 406234337 to Kuroiwa et al. (“Kuroiwa”) and U.S. Pat. No. 5,707,103 to Balk (“Balk”). The examiner also asserts that Claims 10, 11, and 13-15 are unpatentable over the combination of Borsani, Kuroiwa and Balk in view of U.S. Pat. No. 5,826,942 to Sutton et al. (“Sutton”).

To support an obviousness rejection MPEP § 2143.03 requires “all words of a claim to be considered” and MPEP § 2141.02 requires consideration of the “[claimed] invention and prior art as a whole.” Further, the Board of Patent Appeal and Interferences recently confirmed that a proper, post-KSR obviousness determination still requires the Office make “a searching comparison of the claimed invention—including all its limitations—with the teaching of the prior art.” *In re Wada and Murphy*, Appeal

2007-3733, citing *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) and *CFMT v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003). In sum, it remains well-settled law that an obviousness rejection requires at least a suggestion of all of the elements of the rejected claim.

The examiner asserts on pages 2 and 3 of the Final Office action that the top portion of the seat cushion 1 of Borsani is capable of being pivoted to a position facially adjacent a seatback 2, and that the seatback is capable of being pivoted to a position facially adjacent the top portion of the seat cushion. Applicants respectfully disagree. Nowhere in the specification or figures does Borsani disclose or suggest this feature. Furthermore, the seat cushion 1 and seatback 2 taught by Borsani and shown in Fig. 1 of this reference cannot be pivoted in the manner of applicants' claimed invention. As shown in Exhibit A below, Fig. 1 of Borsani has been annotated by applicants to show that seatback 2 clearly cannot be pivoted to a position facially adjacent the top portion of the seat cushion 1 in the manner of applicants' claimed invention because, as indicated by the hatched area, the seat cushion interferes with the movement of the seatback and thus prevents the seatback from being positionable facially adjacent the top portion of the seat cushion. Likewise, as shown in Exhibit B below, Fig. 1 of Borsani has been annotated by applicants to clearly show that seat cushion 1 cannot be pivoted to a position facially adjacent the seatback 2 because, as indicated by the hatched area, the seatback interferes with the movement of the seat cushion and thus prevents the seat cushion from being positionable facially adjacent the seatback.

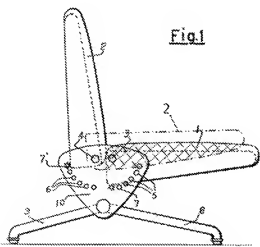


Exhibit A

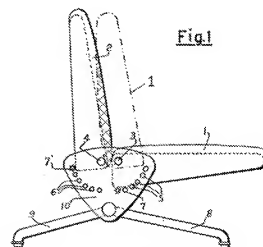
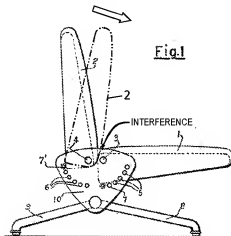
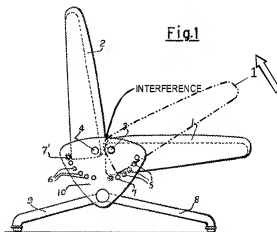


Exhibit B

The fact that the seat cushion 1 and the seatback 2 taught by Borsani cannot be pivoted facially adjacent one another in the manner of applicants' claimed invention is further demonstrated by Exhibit C, wherein Fig. 1 of Borsani has been annotated by applicants to clearly show that downward travel of seatback 2 is limited by interfering contact with seat cushion 1. Likewise, Exhibit D is Fig. 1 of Borsani annotated by applicants to clearly show that upward travel of seat cushion 1 is limited by interfering contact with seatback 2.

**Exhibit C****Exhibit D**

Furthermore, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). On page 5 of the Final Office action the examiner asserts that one would be motivated by the teachings of Balk to modify the seat of Borsani to elevate the hinge point 4 of the seatback 2 with respect to the seat cushion 1. In fact, Borsani teaches that the seat cushion 1 and the seatback 2 (and thus hinge pivot points 3, 4 of the seat cushion and the seatback respectively) are to be in the same plane so that the divan can be configured as a bed (col. 1, lines 33-39; col. 1, line 65 through col. 2, line 2). Clearly, elevating the hinge pivot point 4 of the seatback 2 of Borsani in the manner proposed by the examiner would not allow the seatback to lie in the same plane as the seat cushion 1 as prescribed by Borsani, and would therefore destroy the divan's intended purpose of functioning as a bed. Thus, contrary to the examiner's assertion on page 5 of the Final

Office action, there is no motivation or suggestion to elevate the hinge pivot point 4 of the seatback 2 of Borsani with respect to the hinge pivot point 3 of the seat cushion 1.

In addition, although the seat cushion 1 and seatback 2 of Borsani are “independently pivotable” (i.e., no adjustment mechanism linking together the movement of the seat cushion and the seatback) as asserted by the examiner on page 3 of the Final Office action, unlike applicants’ claimed invention the seat cushion of Borsani is not movable while the seatback is stationary; nor is the seatback movable while the seat cushion is stationary, in the manner of applicants’ claimed invention. As noted above and shown in Exhibits A, B, C and D the seat cushion 1 and seatback 2 interfere with and thus limit each others’ pivotal movement about hinge pivot points 3 and 4 respectively. Accordingly, to avoid this interference, moving seat cushion 1 upwardly requires that the seatback 2 be moved downwardly, as illustrated in annotated Fig. 1 of Borsani shown in Exhibit E. Likewise, moving seatback 2 upwardly requires that the seat cushion 1 be moved downwardly, as illustrated in the annotated Fig. 1 of Borsani shown in Exhibit F.

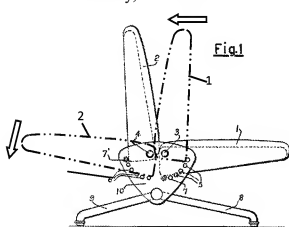


Exhibit E

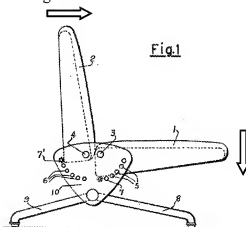


Exhibit F

Balk and Kuroiwa likewise fail to teach a seat cushion and seatback that operate in the manner of applicants’ claimed invention.

For at least the foregoing reasons applicants submit that the invention of Claims 1-4, 6-9, 12, and 20 are patentable over the combination of Borsani, Balk and Kuroiwa. Since the examiner has already located the most relevant art, applicants further submit that Claims 1-4, 6-9, 12, and 20 are in condition for allowance.

Claims 10, 11, and 13-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Borsani, Balk and Kuroiwa, further in view of U.S. Pat. No. 5,826,942 to Sutton et al. ("Sutton"). Applicants submit that Claim 1 is patentable over the combination of Borsani, Balk and Kuroiwa for the reasons provided above. Sutton, cited by the examiner with regard to a pivotable headrest and a third latch, fails to provide any additional teaching or suggestion that would render Claim 1 obvious. Claims 10, 11, and 13-15 are thus likewise allowable because these claims depend ultimately from amended Claim 1 and each add limitations that further distinguish the claimed invention from the prior art.

II. Conclusion

Based upon the foregoing, applicants submit that the rejection of Claims 1-4, 6-15, and 20 under 35 U.S.C. § 103(a) is improper and should be reversed.